IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.606 OF 2006

M/s.Shubhada Polymers Products P.Ltd. Petitioners
vs.
The Union of India & anr. Respondents

Mr.M.H.Patil with Ms.Aparna Hirandagi for the petitioners.

Mr.P.S.Jetley with Mr.C.J.Joy for the respondents.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 9th March, 2006

P.C.

Rule. Returnable forthwith.

2. Mr.C.J.Joy, advocate waives service for the respondents.

3. By consent, rule is heard finally at this stage.

4. The petitioners have approached this Court by means of this writ petition aggrieved by the order dated 30th June 2005 passed by the Joint Secretary, Government of India, Ministry of Finance, New Delhi whereby he disposed of three revision applications.

5. The petitioners rebate claims were rejected by the Deputy Commissioner vide three orders in original passed on 23rd January, 2004, 9th March, 2004 and 23rd April, 2004. Aggrieved thereby the petitioners preferred three appeals. The Commissioner (Appeals) by consolidated order dated 28th October, 2004 disposed of two appeals arising out of the order dated 9th March, 2004 and 23rd April, 2004. By a separate order passed a day earlier on 27th October, 2004, the Commissioner (Appeals) disposed of the Appeal from the order dated 23rd January, 2004. Aggrieved thereby the three revision applications were filed by the petitioners under Section 35 EE(2) of the Central Excise Act, 1944. All the three revision applications, as indicated above, came to be dismissed on 30th June, 2005. Hence the present writ petition.

6. The present writ petition deserves to be allowed on the short ground of non-consideration of the Corrigendum dated 19th November, 2002 clarifying the condition V of the Notification No.43/2002-CUS dated 19th April, 2002 despite the specific contention raised in this regard by the petitioner. In the revision application, admittedly, the petitioner raised inter alia the following contentions:

(a) That the appellants had submitted that Notification No.43/2002-Cus. Dated:

19/04/2002 is concerned, it stands corrected ab initio from 19/04/2002 and D.E.E.C. availment bar, therefore, vide condition (v) therein, is correctly barred only against Rule 18 18 (input) (ARE-2) or rule 19(2) CT2 + ARE-2, rebate or relief and not against rule 18 (finished goods (ARE-1), rebate or rule 19(1) ARE-1 or CR1 +ARE-1), facility. The Ld. Commissioner thus rejected rebate claim without applying his mind and without taking the change made in the Notification No.43/2002-Cus.

(b) That the Govt. of India, Ministry of Finance & Co. affairs, Department of Revenue vide Drawback Public Notice No:9/2002 dt: 29/11/2002 issued a Corrigendum which read as below:-

. "G.S.R. 705 (E)":- In condition (v) of opening paragraph of the Notification of the Govt. of India in the erstwhile Ministry of Finance, Dept., of Revenue, No: 43/2002-Cus. Dated: 19/04/2002, published in the Gazette of India (extraordinary), vide G.S.R.No: 292 (E), the words & figure "rule 18 (rebates of duty paid on materials used in the manufacturer of resultant product."

7. Upon perusal of the impugned order, we find no discussion and consideration of the Corrigendum dated 29th November, 2002 in the impugned order.

8. Without going into the merits of the matter, we are satisfied that the matter requires reconsideration by the revisional authority since the vital issue concerning applicability of corrigendum dated 29th November, 2002 clarifying condition V of the Notification No.43/2002-Cus dated 19th April, 2002 was

not considered by the revisional authority.

9. We, accordingly, dispose of the rule by the following order:

(i) The order dated 30th June, 2005 passed by the Joint Secretary, Government of India, Ministry of Finance, New Delhi is quashed and set aside.

(ii) The three revision applications arising out of orders in Appeal No.AT/82/M-II/04 and Appeal No.AT/85 & 86/Mumbai-II/2004 dated 27th October, 2004 and 28th October, 2004 are restored to the file of the Joint Secretary, Government of India, Ministry of Finance, New Delhi for fresh consideration in accordance with law in the light of the Corrigendum dated 29th November, 2002.

. No costs.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)